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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,323	09/28/2006	Katrin Counradi	P29298	4896
7055 7590 06/17/2009 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER MRUK, BRIAN P				
ART UNIT 1796		PAPER NUMBER		
NOTIFICATION DATE 06/17/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com

pto@gbpatent.com

# Office Action Summary

**Application No.**

10/573,323

**Applicant(s)**

COUNRADI ET AL.

**Examiner**

Brian P. Mruk

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed April 8, 2009. Applicant has cancelled claims 10-40. New claims 41-71 have been added. Currently, claims 41-71 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20081204.
3. The objection of claim 30 is withdrawn in view of applicant's amendments and remarks. Specifically, claim 30 has been cancelled.
4. The rejection of claims 10-40 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sonnevile-Aubrun et al, US 2003/0206955, is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10-40 have been cancelled.
5. The rejection of claims 10, 11, 14 and 17-30 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Muller et al, US 2004/0234482, is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10, 11, 14 and 17-30 have been cancelled.

6. The rejection of claims 10, 11, 14, 17-26, 29 and 30 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Patel, US 2004/0023820, is withdrawn in view of applicant's amendments and remarks.

Specifically, claims 10, 11, 14, 17-26, 29 and 30 have been cancelled.

7. The rejection of claims 10-26 and 29-37 under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Strabner et al, DE 10147049, is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10-26 and 29-37 have been cancelled.

8. The provisional rejection of claims 10, 11, 14 and 17-30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 31-60 of copending Application No. 11/179,491 is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10, 11, 14 and 17-30 have been cancelled.

9. The provisional rejection of claims 10, 11, 14 and 17-30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 and 40-48 of copending Application No. 10/830,001 is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10, 11, 14 and 17-30 have been cancelled.

10. The provisional rejection of claims 10, 11, 14 and 17-30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 15-49 of copending Application No. 11/573,329 is withdrawn in view of applicant's amendments and remarks. Specifically, claims 10, 11, 14 and 17-30 have been cancelled.

### **NEW GROUNDS OF REJECTION**

#### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

#### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 41-71 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dubowoj, DE 19937813.

Dubowoj, DE 19937813, discloses an aqueous hair washing composition that is gel-forming and transparent, wherein the composition contains 2.5-50% by weight of surfactants, 0.25-10% by weight of an acrylate terpolymer, and adjunct ingredients, such as visible particles (see attached English abstract). Specifically, note Example 1 on page 6, which contains 10% by weight of a sulfosuccinate surfactant, 4% by weight of an ether sulfate surfactant, 4% by weight of an alkylglucoside, 2% by weight of sodium lauroyl glutamate, 3% by weight of an acrylate terpolymer, 2% by weight of PEG-40 hydrogenated castor oil, and adjunct ingredients, wherein the pH of the composition is 6, per the requirements of the instant invention. Also not page 5, lines 58-59, wherein Dubowoj discloses that the composition may have a pH up to 8.5. Although Dubowoj is silent with respect to the transmission value, yield point, and tan delta of their composition, the examiner asserts that the compositions disclosed in Dubowoj would inherently meet the transmission value, yield point, and tan delta requirements of the instant invention, since the compositions disclosed in Dubowoj contain all of the required components in the amounts required in the instant claims, absent a showing otherwise. Absent a full translation, instant claims 41-71 are anticipated by Dubowoj, DE 19937813.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

***Response to Arguments***

14. Applicant's arguments with respect to claims 41-71 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian P Mruk/  
Primary Examiner, Art Unit 1796

Brian P Mruk  
June 14, 2009

Brian P Mruk  
Primary Examiner  
Art Unit 1796